

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harold Rodriguez	Team: Squad #1	CCRB Case #: 202006316	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/04/2020 8:00 PM	Location of Incident: East 136th Street and Brook Avenue	Precinct: 40	18 Mo. SOL 12/4/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 09/11/2020 9:35 AM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Fri, 09/11/2020 9:35 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Migliaccio	25698	964169	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Stephen Centore	31854	936328	DIS CTL
2. POM Matthew Miret	07813	961955	PSA 7
3. SGT Steven Counihan	4669	952620	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM John Migliaccio	Force: Police Officer John Migliaccio used physical force against § 87(2)(b)	

Case Summary

§ 87(2)(b) filed the following complaint via the CCRB website on September 11, 2020 on behalf of his friend, § 87(2)(b) heard about the incident on a video posted to Facebook and did not witness the incident in person.

On June 4, 2020, at approximately 8:00 p.m., a Black Lives Matter protest marched along Brook Avenue in the Mott Haven section of the Bronx. Several NYPD officers from different commands arrested protestors at the corner of Brook Avenue and East 136th Street. Police Officer John Migliaccio of Police Service Area 7 approached § 87(2)(b) and pushed them to the ground (**Allegation A-Force: Unsubstantiated**).

There were 50 Body-Worn Camera (BWC) videos associated with this protest, but none captured this allegation (Board Reviews 02-51). PO Migliaccio did not have a BWC on this date due to it being broken two days prior and he had not yet gotten a replacement (Board Review 52).

§ 87(2)(b)

This case involves allegations of kettling and other concerted enforcement actions performed under the command and supervision of the then Chief of Department Terrance Monahan and Assistant Chief Kenneth Lehr. These allegations are being addressed in case 202006855.

Findings and Recommendations

Allegation (A) Force: Police Officer John Migliaccio used physical force against § 87(2)(b)

Two heavily edited and spliced together videos were posted on Facebook and also appeared on the § 87(2)(b) (Board Review 01, 53). The sources of the two videos are unknown. § 87(2)(b) called into the radio show and stated that officers used force and pepper sprayed protestors, but § 87(2)(b) was outside of all the violence and told people to put their hands up. PO Migliaccio walked over and pushed § 87(2)(b) to the ground, causing them to hit their head on the concrete. § 87(2)(b) did not provide any further context.

The video posted to Facebook contains two separate videos. The first video depicts a blurry and edited aerial point of view (Board Review 01). PO Migliaccio walks up to § 87(2)(b) who is standing on the sidewalk, and pushes them. § 87(2)(b) falls backwards onto the sidewalk but maintains their head up and it does not appear to hit the ground. The second video begins at 00:19, where a cell phone video records from behind § 87(2)(b) who is wearing all black and a white baseball cap. The video captures them continuously yelling, “Hands up!” towards a crowd of protestors. § 87(2)(b) walks toward a line of officers in NYPD “turtle gear,” that are also on the sidewalk and blocking the intersection with bicycles. § 87(2)(b) appears to get within one to two feet from the officers. At 00:27, PO Migliaccio enters the frame from the left side and pushes § 87(2)(b) away from the officers with the bicycles with both hands while yelling, “back up!” § 87(2)(b) fall is not captured in this video. At 00:37, § 87(2)(b) walks back into frame, yelling, “hands up!” and approaches the intersection again as they initially did prior to the push.

PO Centore’s BWC video captured an interaction with § 87(2)(b) but it is unclear when it

took place in relation to the above incident and did not capture PO Migliaccio pushing them (Board Review 04). At 20:36 of the video, § 87(2)(b) is seen standing in the crosswalk with their hands up and yelling, “Hands up!” They return to the sidewalk and then come back onto the street at 21:05 yelling, “hands up” again. At 21:42, PO Centore commands, “Out of the street!” three times to various individuals, including § 87(2)(b) and then tells the group to get on the sidewalk. A line of bicycle officers appears to block East 136th Street. At 22:02, PO Centore says, “Guys, listen to me right now. Get out of the street. Out of the street. Red shirt, out of the street. I’m telling you right now, out of the street! Black shirt (§ 87(2)(b) please. Thank you!” At 24:35, § 87(2)(b) is at the corner with their phone out. PO Centore states, “Ma’am, I’m not gonna tell you again.” § 87(2)(b) replies, “I have a letter. I’m a medic. I’m allowed to be here. You can read this. I’m allowed to be here. That man over there knows I’m a medic” As § 87(2)(b) speaks, PO Centore speaks to them at the same time and says, “No. You’re gonna go behind the line right now. I’m going to escort you to the end of the line. Don’t push back. You’re gonna go behind the line. We have FD here and we don’t need you. Go behind the line. You’re not in uniform, you’re going behind the line right now!” PO Centore walks towards § 87(2)(b) and they walk backwards down the block. PO Centore turns around and does not interact with § 87(2)(b) further. § 87(2)(b) is not seen again in PO Centore’s video.

§ 87(2)(b) did not cooperate with the investigation and therefore did not provide a statement to the CCRB. § 87(2)(b) was reached on September 24, 2020 and stated that they did not want to provide any statements until speaking with an attorney and they would contact the CCRB when they were ready to speak. § 87(2)(b) did not contact the CCRB and did not answer any subsequent contact attempts by the CCRB.

On February 3, 2021, PO John Migliaccio provided a statement for CCRB #202004301 (Board Review 54). On June 4, 2020, PO Migliaccio was on routine patrol and received a call over the radio for a 10-13 (officer in need of assistance) at East 136th Street and Brook Avenue in the Bronx. PO Migliaccio, PO Matthew Miret and Lt. Eric Dym responded together to the incident location. He did not remember hearing about this protest by any other means prior to receiving this radio call and did not take part in any meetings about the protest. He did not know what the protest was about or who the organizers of the protest were. Throughout the entire day, there was a lot of radio traffic about a protest and where the protest was moving but he did not receive any specific instructions prior to going to this protest about the use of force or arrests to be made for this group. PO Migliaccio did not receive specific instructions about curfew enforcement prior to going to the protest.

When PO Migliaccio arrived, he saw a large protest or riot happening on the street. There were SRG (Strategic Response Group) officers all over the area, but PO Migliaccio did not know if SRG had any specific plans for this protest. He saw approximately 1,500 to 2,000 protestors on scene and a few hundred officers. Protestors were screaming and throwing objects and liquids at the officers. The protestors were refusing orders to disperse. PO Migliaccio and the other PSA 7 officers were told to stand behind the SRG bike officers to support them and make sure that they did not fall down. The SRG bike officers were at the bottom of the hill on the street facing towards the crowd with their bikes in front of them across the entirety of the street. There was another half-circle of SRG bike officers behind the front line making sure that no one snuck up from behind them. They were struggling to keep the crowd from pushing through them.

PO Migliaccio saw § 87(2)(b) approaching the bike officers. PO Migliaccio gave verbal commands for them to get back. § 87(2)(b) stood very close to the officers and approached aggressively. PO Migliaccio pushed § 87(2)(b) to get them away from the officers on the bikes.

PO Migliaccio was interviewed separately for this case (Board Review 55). He stated that he and his partners responded to a call for assistance over the radio at the location of the protest. PO Migliaccio and his partners were separated immediately after arriving and he did not see them again for several hours. PO Migliaccio described what he saw as “organized chaos” and received multiple instructions from multiple officers that he did not recognize. He was instructed to go to specific areas and do various tasks that he did not recall. He recalled that there was an automated message playing over a loudspeaker stating that all protestors were in violation of the city’s curfew and had to disperse. He described Brook Avenue as a hill and stated that a large number of protestors pushed towards police officers from the top of the hill and looked like they were trying to overrun the officers. PO Migliaccio did not initially know who § 87(2)(b) was but then remembered after being shown the Facebook video and PO Centore’s BWC video.

PO Migliaccio identified himself in the Facebook video but could not identify other officers because the video was too blurry. He stated that he and multiple unknown SRG officers told § 87(2)(b) to move back because they kept advancing towards a line of officers on bicycles on the corner of Brook Avenue and East 136th Street in an aggressive manner. § 87(2)(b) yelled and cursed at officers nearby while standing in the middle of the street. PO Migliaccio did not recall how long he observed § 87(2)(b) advance towards the officers or curse at them before he intervened. He did not recall how many times he or other officers told § 87(2)(b) to step back and leave the area. Since § 87(2)(b) did not listen to the officers’ commands to step back, he walked up to them and pushed them back to get them away from the line of officers on the corner. He stated that he did this in order to be in compliance with the orders given by unknown SRG supervisors to keep protestors away from the bike officers. After pushing § 87(2)(b) PO Migliaccio walked away from the area and did not interact with them further. PO Migliaccio saw PO Centore’s BWC video where PO Centore interacted with § 87(2)(b) but he did not recall seeing that happen or if it was the same interaction he saw.

PO Centore provided a statement for CCRB # 202004301 on December 22, 2020 (Board Review 56) but did not cover his interaction with § 87(2)(b). PO Centore provided a statement for this case on March 11, 2021 (Board Review 57). PO Centore was assigned to a bike detail. PO Centore’s assignment at the time of this incident was to separate the group of protestors from the nearby residential buildings so that residents could come in and out of the building without being blocked.

PO Centore did not have any recollection of this incident and did not know who § 87(2)(b) or PO Migliaccio were. PO Centore was shown the Facebook video and did not recognize § 87(2)(b) and did not recall seeing this incident occur. PO Centore was shown his body worn camera video footage that showed an interaction between himself and § 87(2)(b). He recalled this specific interaction he had with § 87(2)(b) but did not recall seeing the push and did not know when his interaction with them occurred in relation to the push.

PO Centore stated that there was an individual sitting against a nearby fence with injuries that he did not recall. FDNY medical personnel were there and attended to the individual. § 87(2)(b) approached and wanted to attend to the injured individual. § 87(2)(b) stated that they were a medic and tried to show PO Centore a piece of paper. PO Centore did not want to stop to read the piece of paper as there was a large crowd of protestors in the area that officers were trying to get under control. PO Centore told § 87(2)(b) that FDNY was present and § 87(2)(b) assistance was not required. PO Centore asked § 87(2)(b) multiple times to walk away and they did not comply. PO Centore then escorted § 87(2)(b) away from the crowd. He stated that another reason he did not let § 87(2)(b) assist was because they were not in any sort of

official uniform that identified them as medical personnel.

PO Miret and Sgt. Steven Counihan, both assigned to PSA7, were interviewed, and they did not recognize § 87(2)(b). They were shown the original Facebook video of the incident and PO Centore's BWC video. They did not recall witnessing either incident (Board Review 58, 59). Neither PO Miret nor Sgt. Counihan were visible in any of the videos related to this case. PO Miret and Sgt. Counihan did not have BWC video because the batteries on their cameras were dead. PO Miret specified that there was a malfunction with the charging docks that resulted in the PSA7 cameras being dead on the June 4, 2020.

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life (Board Review 60).

Patrol Guide Procedure 221-02 on the use of force states that a member of service should apply no more than the reasonable amount of force necessary to gain control. The member of service should assess the situation continually and adjust the use of force as necessary (Board Review 61).

PO Migliaccio and PO Centore were consistent in stating that § 87(2)(b) disobeyed multiple orders to step back and move away from nearby officers. PO Centore's video showed him issuing multiple commands for § 87(2)(b) and other individuals to get out of the street and move down the block. Although it is unknown when the two videos took place in relation to each other, the videos depict § 87(2)(b) repeatedly walking into or towards the street. The Facebook video also depicts § 87(2)(b) getting within a few feet of the bike officers that had the street barricaded. PO Migliaccio, who stated that he was instructed to keep the bike officers safe, pushed § 87(2)(b) one time away from the bike officers. Even after PO Migliaccio pushed them away, they stood up and continued advancing towards the street and the bike officers. ■

§ 87(2)(g)

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 63).
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- PO Migliaccio has been a member of service for three years and has been a subject in seven CCRB complaints and 21 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of December 10, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 65).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 64).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 66).

Squad No.: 1

Investigator: SI Harold Rodriguez _____ 6/7/21
Signature Print Title & Name Date

Squad Leader: Mgr. Joy Almeyda _____ 6.7.21
Signature Print Title & Name Date

Reviewer: _____ _____ _____
Signature Print Title & Name Date